

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES M HINKLEY,

Plaintiff,

v.

ELDON VAIL, et al.,

Defendants.

CASE NO. C12-5969 RBL

ORDER ON VARIOUS MOTIONS

[DKT. #s 75, 76, 78, 81]

THIS MATTER is before the Court on the following Motions: Plaintiff's (Second) Motion to Appoint Counsel [Dkt. #76], Plaintiff's "Notice of Appeal" [Dkt. #78] of Magistrate Judge Strombom's Order [Dkt. #73] denying his Motion to Compel Discovery [Dkt. #58]; and Plaintiff's Objections [Dkt. #81] to the Magistrate Judge's Report and Recommendation [Dkt. #75], which advises this court to Deny Plaintiff's Motion for Summary Judgment [Dkt. #42] and to Grant in part the Defendants' Motion for Summary Judgment [Dkt. #44], and to dismiss the case.

The case involves a prisoner who claims that his constitutional rights were violated when he was placed on "dry cell watch/search" in connection with suspected drug or other contraband use. Plaintiff sought to compel the production of information that the Magistrate Judge refused

1 to compel, correctly determining that the discovery would implicate and perhaps jeopardize  
2 confidential informants. *See* Dkt. # 73. Plaintiff's appeal of that order is DENIED for the  
3 reasons outlined in the Order.

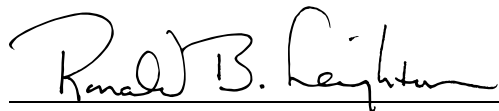
4 Under 28 U.S.C. § 1915(e)(1), the Court may, in exceptional circumstances, request an  
5 attorney to represent any person unable to afford counsel. *Franklin v. Murphy*, 745 F.2d 1221,  
6 1236 (9<sup>th</sup> Cir. 1984). To find exceptional circumstances, the court must evaluate the likelihood  
7 of success on the merits and the ability of the petitioner to articulate the claims *pro se* in light of  
8 the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9<sup>th</sup> Cir.  
9 1983). Plaintiff has not shown that he has any likelihood of success on the merits (as is  
10 discussed below), and is able to articulate his claims, though they are not meritorious.

11 Plaintiff's Motion for appointment of an attorney [Dkt. #76] is DENIED.

12 Finally, for the reasons articulated in the Magistrate Judge's Report and Recommendation  
13 [Dkt. #75] the Plaintiff's Motion for Summary Judgment is DENIED and the Defendants'  
14 Motion for Summary Judgment is GRANTED in part. The Plaintiff's claims against all  
15 defendants are Dismissed under Rule 56; except that the claims against Defendants DeMars and  
16 Arlow are dismissed with prejudice for failure to state a claim.

17 IT IS SO ORDERED.

18 Dated this 4<sup>th</sup> day of September, 2013.

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21 RONALD B. LEIGHTON  
22 UNITED STATES DISTRICT JUDGE  
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